
ICANN69 | Virtual Annual General - Joint Meeting: ICANN Board and GAC
Tuesday, October 20, 2020 - 09:00 to 10:00 CEST

GULTEN TEPE:

May I ask the technical support team to start the recording?
Good morning, good afternoon and good evening. Welcome to ICANN69 GAC meeting with the ICANN Board scheduled on Tuesday 20th of October at 7UTC. I am Gulden Tepe from the GAC support team with recognizing these public sessions and other members of the ICANN community may be in attendance GAC leadership and support staff encourage all of you who are GAC representatives and delegates to type your name and affiliation in the participation chat box to keep accurate attendance comments and questions to be read out loud. The Zoom room is equipped with a chat feature at the bottom on the right. If you would like to ask a question or make a comment please type it in the chat by starting and ending your sentence with a question or comment as noted in the chat.

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MANAL ISMAIL, GAC CHAIR: Good morning, good afternoon, and good evening. Welcome everyone to our GAC meeting with the Board. I would like to start by welcoming all Board members who have joined us in the GAC Zoom room today. We always value our exchanges and look forward to a fruitful discussion. I would also like to welcome community members in the GAC Zoom room. And before

starting with our agenda, Maarten, would you like to make any opening remarks?

MAARTEN BOTTERMAN: Yes, thank you, Manal, for having us. This is an important session for us, with all the constituencies, that we get things done. Just want to express my empathy for all those in the Americas for whom it is the middle of the night or very early morning. And thank you all for being here and being so dedicated to what we need to do in the ICANN space. Of course we would have liked to be in person, but we will make the best of it together. Looking forward to our session. So without further ado.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten. And if you agree we will follow the agenda on the screen. First discussing the GAC priority areas then go to the topic suggested by the Board. So we can roughly allocate around ten minutes for each topic. I'm sure some topics may take more than others but we can manage as we go. So I hope this sounds okay for everyone.

And if so, let's move to the following slide, starting with topic that the GAC compiled for today's meeting. We have the new gTLD subsequent procedures, registration data on WHOIS,

ATRT3 final report, and ICANN operational design phase proposal. So for the new gTLD subsequent procedures as part of its meeting prep for communicating with the Board, the GAC provided background text highlighting that the GAC had provided input on a number of specific topics in the draft final report including the predictability framework and some concerns about the added value of the proposed SPIRT structure, registry voluntary commitments and public interest commitments, enforceability and concerns regarding absence of policy recommendations on DNS mitigation abuse in the final report. Applicant support matters, closed generics and reiteration that exclusive access serving the public for the good. Value of GAC consensus advice and GAC early warnings, value of objections to protect certain names and abbreviations, importance of clarifying and improving dispute resolution procedures after delegation of community applications and improvement to the community priority process and guidelines, and lastly, auctions, mechanisms of last resort, private resolution of contention sets. To dis-incentivize potential [indiscernible] in the resolution process. So with this background if we can go to the following slide with the GAC questions.

First on the public interest commitments in new gTLD contracts in recent correspondence to the new gTLD subsequent

procedures PDP working group, the ICANN Board expressed concerns about ICANN's ability to enter and enforce any content-related issue regarding fixed or registry voluntary commitments due to limitations of ICANN's mission in the bylaws. Could the Board further explain these concerns, please?

MAARTEN BOTTERMAN: Good morning, Manal. Just to start off, of course this doesn't replace a formal exchange of thoughts and advice but it's good to have an open discussion about this. I would like to ask Avri, who is leading the subsequent procedures working group on the Board, to take the first response to this.

AVRI DORIA: Thank you, Maarten. This is Avri Doria speaking. So yeah, in talking about this, I want to be sure to emphasize that at this point these are just comments on the final draft, the work is still in the hands of the subsequent procedures working group and the hands of the GNSO council. The other thing in terms of all of the answers, what we were trying to do is sort of convey some of the questions that have come up in our discussion of these issues. We are trying to be as careful as possible to not prejudice any issues, to not, as people say, put fingers on scales, to not present possible solutions. And basically, again, going back to

what questions do we have to look at when deciding at the end of the day and to make sure there are no surprises at the end of the day in terms of not knowing something is an issue.

In terms of the PICS but especially in terms of the rvc's, the question of are they something that ICANN compliance, ICANN org, the Board can enforce in a sense? Are they things that were actually permitted to make a contract over? And when you go to the fundamental bylaws article 1 which speaks of mission which basically grandfathered some previous things in that may or may not have been [indiscernible], but basically it is asking the working group have they taken that into account? Have they looked at the fact of the mission? Noticing how important things like the rvcs are, will there be ways to structure them such that they aren't in any sense going against the mission but are commitments in the areas that are within the mission?

And so really that is the whole point there, that just can we make those contracts and can we enforce those contracts given their important role in the subsequent procedures? So really, you know, that is the point of it. Hopefully that explains it but those are the concerns that drove those questions thank you.

[overlapping conversations]

MANAL ISMAIL, GAC CHAIR: Hello?

MAARTEN BOTTERMAN: Yes, you are loud and clear now.

MANAL ISMAIL, GAC CHAIR: Okay. I'm sorry. So I was just thanking Avri for the response and it is clear that it is just an exchange and it doesn't preempt in the final decisions by the Board of course. And just looking whether there are any requests for the floor as a follow-up to this question, or we can move on. I see Jorge, please, go ahead.

SWITZERLAND: Hello. Hello, everyone. This is Jorge Cancio from Switzerland, for the record. I would like to thank Avri for this elaboration on the Board concerns. Also at a very high level, as your response, I would share the point that the bylaws and the section that you are referring to on public interest commitments of course is very nuanced, has many different sections to it, contained amongst other things not only a grandfathering of what existed before 2016, those grandfathering of what may be established after 2016 as long as the terms are materially not very different. Of course there is a lot of legalese into that. And there is a last section on that point which specifically affirms that public

interest commitments can be entered into contracts in the future and accordingly be enforced, but I agree that it would be good that the PDP working group looks into the section, tries to find out what it means in terms of policy and that we in the course of the elaboration of the applicant guidebook as much clarity as possible as to what is in the mission and what is not so we create as much legal certainty as possible.

And I think also one important aspect that would address some of the concerns related to free speech, et cetera, is that we factor in of course the core values on human rights that we entered also into the bylaws in 2016 reform. So I hope that this is helpful, and looking forward to fruitful discussion on this very important point for the whole of the community. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jorge. And I also see a question in the chat from Denmark. Finn is asking would any of the existing PICS be in conflict with the bylaws?

MAARTEN BOTTERMAN: I would love you to answer this, Avri.

AVRI DORIA: Okay. I'm going to take both questions. One is I want to thank Jorge in terms of sort of pointing at the nuance and (no audio).

MAARTEN BOTTERMAN: I think the connection with Avri is frozen. Can I ask Becky to go first?

BECKY BURR: Yes, I think if you take a look at the mandatory PICS that are -- you know, there are two categories of public interest commitments that were in the last, the new gTLD round, one was the standard PICs and I think it's pretty hard to argue that any of those are not within ICANN's remit, in other words, pretty hard to argue that they are not reasonably necessary as a matter of collective policy to preserve security and stability, as that concept is designed in the ICANN bylaws which is a little broader than maybe strictly speaking a dictionary definition of stability and security would be. And then there are the PICs that were volunteered and without going through them in any great detail, one could argue that some of them fall outside of ICANN's remits in the sense they commit the registry operator to do things that may exceed the scope of ICANN's mission.

Now, I think that there is a reasonable discussion to be had about what the role of those voluntary PICs and what the

relationship of the voluntary PICs is to ICANN's mission. And I think some people would argue that if you make a commitment that is material to your -- to having the name delegated in the root, then ICANN is simply enforcing a commitment you made in the contract and you need not limit those commitments to things that are reasonably necessary to preserve stability and security. Our question was simply to the subsequent procedures working group to ask them if they had thought about shows issues. Because we're aware that there is a variety of views in the community on that. But I think the standard PICs, it would be hard to argue that those are not in ICANN's mission.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Becky, and thanks everyone. Mindful of the time, maybe we can move on to a follow-up on GAC Montreal CCT review advice and as another point of interest to the GAC, the GAC remind the Board of its Montreal advice not to proceed with a [indiscernible] Republic of gTLD until the complete [reading] -- and continues to closely monitor the implementation of the CT trt review. Can the Board share any current views at this time regarding the implementation of the CT trt review recommendations?

MAARTEN BOTTERMAN: Yes, on this one, Becky, can you follow up on this one as well.

BECKY BURR: Yes, the Board has reviewed a number of the CCT recommendations and adopted a number of them. When we initially adapted those we indicated that additional work was necessary to be done on some of the others. We have worked out way through the remainder of the recommendations and will be discussing with the Board adoption of most of the rest of those recommendations later this week. There are a small number of recommendations that require a bit of additional work on the part of org for the Board to understand the implications and we will be asking org to finalize that work on those very small handful of remaining issues. So by the time this week is out, we expect that the bulk -- that all but a handful of the CCT recommendations will have been adopted by the Board and that the remainder we have specific requests from org with respect to specifications of implementation of adoption.

MAARTEN BOTTERMAN: I guess for the sake of time we move on to the next...

MANAL ISMAIL, GAC CHAIR: Sure, Maarten. So thanks, Becky, and thank you for letting us know that by the end of this week we will hear some of these. So let's move on to the following topic on I believe WHOIS, yes. So as part of its meeting prep communication with the Board, the GAC provided background text highlighting the GAC's recent contributions to the work leading to the final report of the temporary specification for gTLDs and we also noted the minority statements. So let's move to the questions also for the sake of time. If we go to the following slide, please...

So the GNSO Council resolved to forward to the ICANN Board several policy recommendations that did not achieve consensus in the EPDP team. So how does the Board weigh the lack of consensus on certain recommendations in its consideration of whether or not adoption of such recommendations would be in the interest of the ICANN community?

CHRIS DISPAIN: Do you want to go through all of them?

MANAL ISMAIL, GAC CHAIR: Sure. The second question, what are the possible outcomes of the a cost/benefit analysis of a EPDP [reading] -- how does the Board view potential funding of the SSAD? Can the funding of the SSAD be done by ICANN? Should such an analysis be

conducted, would it be conducted before or after the ICANN Board formally considers the policy recommendations? Should an operational design phase be considered for the EPDP Phase 2 policy recommendation, and what impact would it have on the timeline to deliver a standardized system for access and disclosure? And now that the EPDP Phase 2 policy development has completed, are there remaining only cycles to resume implementation of the privacy proxy services accreditation policy recommendations? So over to you now.

CHRIS DISPAIN:

This is Chris Dispain. Thank you, Maarten. I have some notes here. I want to make sure we cover as much as we can on these points, so I hope you will forgive me if I basically read them to you rather than extemporize on the spot. So as you know, and as the GAC as noted the bylaws require the Board to consider whether proposed policies will be in the interest of ICANN and the community. And a specific threshold of Board votes required to meet or be exceeded in the event that the Board determines it's not the case. We have a responsibility to ensure all community feedback is considered including mandatory public comment period which happens prior to the Board's action. We have noted that the GNSO Council voted with a super majority to approve all the recommendations in question, although some

didn't obtain consensus among the working group. But that was also the case with a few of the Phase 1 recommendations, it is worth noting.

The three participating advisory committees filed [indiscernible] to the Board and there was an opportunity to make statements. Board resolution typically includes a rationale of the decision as well as the summary of materials taken into account so that will become clear, the EPDP and council has acknowledged the implementation of the SSAD is likely to be complex and resource intensive. As the GAC is aware, GNSO Council's has requested a consultation with the Board prior to Board section on the Phase 2 recommendations and during that, the question of cost/benefit analysis is likely to be discussed.

Prior to the finalization of its recommendations, the EPDP finalization org provided the team with a generalized list of possible time and costing of building a [indiscernible] accreditation the centralized gateway would entail and needs to be revisited -- only an estimate, and needs to be revisited as part of any cost/benefit phase and the concept of operational design phase under consideration and likely helpful to inform the Board's discussion about the Phase 2 report. The Board understands the GNSO Council is considering its recommendations here at ICANN69. This is a report required

under the bylaws and again would inform the Board as to council decision making with regard to the Phase 2 recommendations, so looking forward to that report and kicks off the next process.

Briefly, on the privacy proxy question, the org currently reviewing impact of existing policies and procedures and that review will help determine next steps. Phase 1 of the EPDP recognized that its recommendations would impact other policies and procedures and [indiscernible] anticipated policy updates to relative areas. This is the [indistinct] org using on next steps, and that report will be shared with the Phase 1 implementation review team and provided to the GNSO Council following this meeting. I hope that covers each of the bullet points raised in the questions. Back to you, Manal.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Chris. So let me just pause before moving on to see whether there are follow-up from my GAC colleagues or any requests for the floor. Okay. If not, then thanks again, Chris, for covering this very efficiently. So can we please move on to the following topic, which is the ATRT3 final report suggestions.

So in short, ATRT3 noted in its final report that responses to the survey they did seem to indicate that ICANN's structures have been following the recent evolution of the GAC Board relationship more closely than individual members and the review team also determined that there has been significant improvement in the GAC in this area which also appears in the responses of ICANN SO/AC's. That said, they suggest that the GAC and the Board develop joint messaging about the current state of their interaction and mechanisms which support these. And in our comments to the final report, we promise to discuss and consider developing recommendations regarding joint messaging with its Board. So we're just flagging this as a topic of mutual interest and would potentially need mutual cooperation. But of course without preempting Board action on ATRT3 recommendations. So it's not a question, per se, but yes, Maarten.

MAARTEN BOTTERMAN: I think this is good to go in from a [indiscernible] successful relationship over the years, and Becky, you are leading this right now.

BECKY BURR: Yes, thank you, Maarten and Manal, this is Becky Burr. We have indeed been having very productive conversations with GAC regarding the input that we're getting, that is input on topics of importance to the GAC as opposed to GAC advice. We find that that is an extremely valuable form of input, and we have developed and agreed on a format for receiving and were responding to that input which we discussed at the last meeting, and I think all agreed that the proposed way forward would make sense. And we are of course ready to engage with the GAC at any time on any of these issues. So I guess we're certainly committed to mutual cooperation as well.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Becky, and Maarten. Maarten, go ahead.

MAARTEN BOTTERMAN: And to constant improvement of our relationship, very much so. This instrument clearly called for that so... yep.

MANAL ISMAIL, GAC CHAIR: Thank you very much, and I think it has been obvious that we have put so many mechanisms in place to enhance the GAC Board relationship, and obviously it shows and it is worth

bringing to the attention of individual community members, I'm sure.

So if we can now move to the last topic on the GAC list, which is the operational design phase proposal, we have received the proposal and just to share with you some initial reactions and questions, the proposal would seem to call for an expansion in certain cases of the ICANN policy development life cycle so the GAC is concerned that operational implementation considerations should be a fundamental part of the PDP effort. And the GAC's initial concern is the potential impact on community resources. Are community resources ample enough to address an additional phase or parallel effort in the ICANN policy development life cycle? And is there a real need and added value of such a mechanism, especially with the envisaged design feedback group?

MAARTEN BOTTERMAN: Yes, thank you. Of course for this, I would like to defer to the ICANN CEO for the proposal. But just to say of course we need to know what we talk about before we proceed with anything. Göran?

GÖRAN MARBY:

Thank you, my friends. And thank you for bringing it up. So the first thing to recognize is that this phase has already existed and has always existed because after recommendation comes out of -- or review for that matter, anything comes out of the community, the org do produce material to do a lot of work to prepare the Board for its decision. And what really caused us to think about it was that some of the things we're now looking at is fairly complex. And if you look at it -- we have the expedited PDP one of them which has many questions that the Board has to make a decision on still remaining. For instance as brought up, the cost.

I think interesting that the GNSO Council, which I think was a very good decision in its recommendation, said let's have a conversation with the Board before the Board makes a decision about costs. And in order for the Board to have that conversation, we need to figure out what the costs will be. And in order to figure out the cost, we have to do work and sit down and think about how do you build a system like this? And we're not building anything from scratch, the idea is of course to use the knowledge we have and to build something that is as cost effective as possible.

We don't know the cost today. And the Board would also ask the question let's take SubPro, would probably be an investment of

ICANN about \$40 million and would also mean that we have to get more staff inside or ICANN org. Which means that the Board would ask me, okay, how are you going to finance this? Where will you put those people inside ICANN org, make sure that you have this talent, et cetera, et cetera. So auction proceeds a completely new function added to ICANN that has to be taken into account.

So if you look at it it work because of the complexities of this, we thought instead of just ICANN org and an interaction with the Board, wanted to make sure that we opened up that process, that we have that discussion in a more transparent way, make sure that the community knows what we do and also gives us the ability before the Board makes a decision to go back and check with the community when comes to the PDP and GNSO Council and GNSO if we understood it correctly because sometimes after the Board has made a decision we go to implementation there are still unknown things that we need to think about and we probably should have thought about them before. And I want to emphasize this is not the opportunity for anyone to open up any negotiations that happened within the PDP before. When the GNSO Council makes decision my job and the Board's job is to make that recommendation happen. Because that is the process of the multi-stakeholder model. So I

think in general terms, I think we will actually save time by doing it.

But I want to caution the fact to build the SSAD is not something that we do very fast. Because we still have unknown things that we have to take into account, and I usually give the simple example, which is not simple at all, the international data transfer [indiscernible] we have new information about this in general terms last night or whatever day it was that European Commission is now looking into that together with the data protection -- not for ICANN itself but for the whole issue itself. So it's not easily done.

So to answer your question, I think we actually will save time and the Board would have better material and I think will be more transparent and won't day it at all. We continue the work for seeking increased legal guidance about the potential of ICANN legal entity and legally responsibility for the balancing test. [indiscernible] yesterday we sent out a paper to the European data protection Board with comments about the role of a data process and data controller which were comments on its guidelines from the European data protection Board, and I hope you can have a look at that. We are still waiting eagerly for the European Commission to use their formal right to ask questions to the European data protection authorities and to

help to us clear up some of the legal issues that still remain and we still have some of those in the SSAD as well. So I hope we can all join and ask the European Commission to do what the Belgian data protection authority has asked them to do, namely contact formally the European data protection Board. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Göran, for this thorough explanation. And I think the four principles listed in the paper are a good basis. So let me also pause here and see if there are any follow-up from my GAC colleagues. I see Jorge Cancio, Switzerland, please go ahead.

SWITZERLAND: Hello everyone. Jorge Cancio from Switzerland again, for the record. And thank you very much, Göran, for this explanation. I think that the point we are making is that of course this kind of preparations before the Board takes a decision about cost implications, about design implications are very important. At the same time at least in many other policy making spaces, this is part of policy making itself. So that's why we had this question why this is not really tackled in the PDP itself, because this is already a very complex and resource- and time-intensive

process. And as we discussed in a [indiscernible] session last week, we have seen that the levels of participation, especially of those who can devote time and knowledge to the policy development processes and to the community work, are very much stretched. At least from the GAC perspective there is an increasing difficulty to follow so many different processes and that's why we had concerns and we have concerns that adding another layer where again, new community groups have to be formed, is something that has to be looked at with utmost care. Because really the levels of capacity for participating meaningfully from the community, and in this case from the GAC, are limited, so as we should be as simple as possible and reduce complexity and not add complexity. But if we go in that direction, I hope we can find a good solution. Thank you.

MAARTEN BOTTERMAN: May I?

MANAL ISMAIL, GAC CHAIR: Please.

MAARTEN BOTTERMAN: Thank you. As we just discussed, this is not a new process, it's an existing process. And this process we're opening up for more

transparency. So I hope I will have calmed your concerns there.
Thank you.

GÖRAN MARBY:

Yes. [indiscernible] if we get the clarity that this process is proceeding where this happens in the development phase, the more that happens in the development phase of the policies, the less needed afterwards so [indiscernible] very much adapted to the specific problem at the table in both the org and the organization are very focused on the pressure on the community and the community's time and effort, even more so in these times. So thanks for that remark. Manal?

MANAL ISMAIL, GAC CHAIR:

Thank you very much, Maarten and Göran. So I think we're good now to move on to the Board topic on enhancing the effectiveness of the multi-stakeholder model? And thank you for raising this important topic. We have shared with you the link to GAC views on the topic but would also like to highlight some elements of our response. So the GAC appreciates how the next steps surely identifies existing work efforts consistent with the multi-stakeholder model evolution. It is appropriate to recognize that relevant parts of the community will continue to engage in their current work efforts which regularly lend

themselves to [indiscernible] each of the priorities. The GAC agrees with the ICANN Board assessment that by limiting immediate next steps to three priority work areas and leveraging existing work efforts, a necessary workload balance can be achieved that will result in incrementally evolutionary enhancements and improved efficiencies to the multi-stakeholder model which is benefit everybody's future work.

The GAC agrees that the actions proposed in the next steps paper should not unduly burden the community and could have a materially positive impact on evolving the multi-stakeholder model. The GAC supports the three priority work areas identified in the next steps paper being prioritization of work and efficient use of resources, precision in scoping the work, consensus, representation, and inclusive and finally the GAC has independently embarked on developing its own implementation of those workstream 2 accountability recommendations and ATRT3 final report suggestions that impact its operations. So I will stop here and see if there are any comments either from the Board side or from my GAC colleagues as well.

MAARTEN BOTTERMAN: Maybe Mandla -- yes, we hear you now.

MANDLA MSIMANG:

Hi, Mandla Msimang of the ICANN Board, for the record. Thank you, Manal and Maarten. To update you, I think first of all, we really appreciate the comments that have been received from the GAC on the multi-stakeholder model paper. And from the comments we have received from yourselves, really appreciate the support really for the community-led outcomes and prioritization and processes that we have come up with to this point. As you know the effort is really important for us to ensure that the model is able to evolve and meet the ever changing needs of ICANN's global community, so also in line with our operating and financial plan for 2021 to 2025.

So really where we are now is moving into implementation stage with now that the paper been finalized and the plan will be converted into a set of proposed actions with resource allocations for each of the actions and we will be we're scheduled for implementation according to the agreed upon level of priority. You spoke about the three priority areas that have been mentioned, and I think it is also important to note that although those are the three priority areas, the six areas are still all going to comprehensibly be dealt with over the course of the five years, it's just that we felt that based on community input dealing those first three would also -- would be more effective and it would also help us so deal with the latter three in

the process of doing that in some cases, for example roles and responsibilities.

So the next steps, as I said, is that we are in implementation phase and we will -- ICANN's organization's new implementation operations team is leading the planning work, and we will be looking for, like I said, more input from you and I think what we wanted was in line with the active support and input we have gotten from GAC to understand what the career opportunities for acceleration that the Board proposed and any input you have as we go forward. So thanks.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Mandla, for this update and indeed a topic that we are following closely, and I have to say happy we managed to submit comments. It was a very loaded period, and thanks to my GAC colleagues for their active engagement and help that we provide responses and input to many public input opportunities. So just checking if there are any follow-up from GAC colleagues, any comments? I see no requests for the floor. And I think we are done with our agenda. Any final remarks from your side or...

MAARTEN BOTTERMAN: Just to say that we really very much appreciate the thinking and the reflection of the GAC on the public interest in matters and we feel it is very helpful for our own orientation but also for the wider community's orientation. So thank you for continuing to bring up the issues as you see them, and let's continue to tackle them together. So I really appreciate it. No other points from our side, I don't think. So this is a luxury for the participants of ICANN69.

MANAL ISMAIL, GAC CHAIR: Yeah. So thank you very much, Maarten, and thank you very much to all Board members who joined us today and to my GAC colleagues as well and to all community members who joined us in the GAC Zoom room. So to GAC colleagues, it is now time for a little bit more than a 30 minute break, followed by the second community plenary on DNS abuse. But please be back in the GAC Zoom room at 1:30 Hamburg time to reconvene our discussions. So thank you again to everyone. The meeting is adjourned. Thanks.

MAARTEN BOTTERMAN: Thank you, Manal. Thanks everybody.

[END OF TRANSCRIPT]